



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

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| Date: | 01/31/13 | Bill No: | Senate Bill 147 |
| Tax Program: | Fire Prevention Fee | Author: | Gaines |
| Sponsor: | Author | Code Sections: | PRC Section 4212 |
| Related Bills: | AB 23 (Donnelly) AB 124 (Morrell) AB 468 (Chesbro) SB 17 (Gaines) SB 125 (Gaines) | Effective Date: | 01/01/14 |

BILL SUMMARY

This bill exempts property owners from payment of the fire prevention fee if they have income of less than 200% of the federal poverty level.

ANALYSIS

CURRENT LAW

Fire Prevention Fee.¹ Existing law² requires the Board of Equalization (BOE) to assess and collect an annual fire prevention fee in accordance with the Fee Collection Procedures Law (FCPL).³ The law⁴ requires the State Board of Forestry and Fire Protection (Fire Board) to adopt emergency regulations to establish a fire prevention fee. The amount must not exceed \$150 per habitable structure on a parcel located within a State Responsibility Area (SRA). Public Resources Code (PRC) Section 4102 defines a SRA as an area for which the Fire Board determines that the state is financially responsible for prevention and suppression of fires. Lastly, the California Department of Forestry and Fire Protection (CAL FIRE) is responsible for fire prevention and suppression in Fire Board-determined SRA's.

Beginning July 1, 2013, the Fire Board must annually adjust the fire prevention fee. The adjustment reflects the percentage change in the average annual value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States.

Collection and Administration. Commencing with the 2011-12 fiscal year (FY), the BOE is required to assess and collect the fire prevention fee annually. The FCPL governs the BOE's collection function.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

¹ Chapter 1.5 (commencing with Section 4210) of Part 2 of Division 4 of the Public Resources Code.

² Public Resources Code Section 4213.

³ Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

⁴ Public Resources Code Section 4212.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

By each January 1, CAL FIRE transmits to the BOE the name, address, and assessment amount for each person liable for the fee. In addition, CAL FIRE provides to the BOE a telephone number that fee payers may use to get answers to their fee questions.

Annual fire prevention fee assessments are due and payable to the BOE 30 days after assessment. The amount assessed becomes final at the end of the 30-day period, unless a fee payer files a petition for redetermination within that period. If a fee payer files a timely petition for redetermination, all legal collection actions are held until CAL FIRE decides the petition's merit.

The BOE lacks authority to decide or review any petition for redetermination or claim for refund of any amount that CAL FIRE has determined. CAL FIRE handles all appeals, and a person may only file a refund claim with the BOE if CAL FIRE determines that the person is entitled to a refund.

The fire prevention fee may not be collected if, in any given fiscal year, the SRA Fire Prevention Fund has sufficient funds to finance prevention activities. The law requires the fee revenues to be used to cover any startup costs incurred over a two-year period.

PROPOSED LAW

This bill exempts property owners with income of less than 200% of the federal poverty level from payment of the fire prevention fee.

The bill would become effective immediately as an urgency statute.

BACKGROUND

On July 7, 2011, Governor Brown signed ABx1 29,⁵ which required the BOE to collect the new fire fee, commencing with FY 2011-12. However, the BOE delayed implementation because the Legislature failed to appropriate sufficient funds to cover the BOE's costs.

The Governor's signing message for ABx1 29 provides in part, "A fee consistent with the 'beneficiary pays principle,' such as the one intended in this bill, can achieve significant General Fund savings. However, as currently drafted, the revenues may not materialize. I am directing the Department of Finance and CAL FIRE to work with the Legislature during the remaining legislative session to identify necessary clean-up language to realize these revenues."

Subsequently, the Governor supported ABx1 24 (Blumenfeld), amended September 1, 2011, which was intended to impose a fire protection fee to fund fire suppression and prevention services and emergency response efforts in SRAs. ABx1 24 differed from ABx1 29 in that it proposed a per acre fee along with a structure fee, and authorized funds for fire suppression. The Senate Budget & Fiscal Review Committee held the bill.

Another measure, ABx1 45 (Jeffries), introduced September 2, 2011, would have repealed the fire prevention fee. The bill died at the Assembly desk.

In 2012, AB 1506 (Jeffries and Cook) and SB 1040 (Evans), as amended August 27, 2012, also would have repealed the fire prevention fee. The Assembly Appropriations Committee held AB 1506, while SB 1040 was held by the Budget Committee.

⁵ Chapter 8, Stats. 2011, added Chapter 1.5 (commencing with Section 4210) to Part 2 of Division 4 of the PRC.

Last year's AB 2474 (Chesbro) would have provided habitable structure owners a credit of up to \$150 against the fire prevention fee for structures within a SRA if they also paid a local agency for fire protection services. The Assembly Appropriations Committee held the bill.

COMMENTS

1. **Sponsor and Purpose.** The author is sponsoring this bill to exempt rural property owners from what he believes to be payment of a fee that imposes an unfair and undue burden.
2. **Are property owners exempt from the fire fee, or exempt from *payment* of the fee?** Most exemptions provide an exemption from the *imposition* of a tax or fee, not *payment*. This bill exempts certain property owners from *payment* of the fee. BOE staff believes this can be interpreted to mean that CAL FIRE may still provide BOE with the name, address, and assessment amount of each person liable for the fee and that BOE would be required to assess the fee. Those property owners that believe they are exempt from *payment* of the fee would then file an exemption with either CAL FIRE or the BOE. We recommend the author clarify the intent of the bill, and can provide assistance drafting appropriate amendments.
3. **Which agency would administer the fire fee exemption?** After CAL FIRE provides BOE with the name, address and fee assessment amount of each liable person, the BOE issues the assessments. Under current law, CAL FIRE handles the appeals process. Existing statutes clearly distinguish the administrative functions of each of the state agencies.

However, this bill fails to specify which of the state agencies involved in the fire fee program would administer the proposed exemption. Does the author intend for the BOE to administer the exemption? Although the BOE administers many exemptions related to various tax and fee programs, most exemptions pertain to exempt purchases or uses of a product, not a person's income level. The fire prevention fee program and this proposed exemption would create ongoing challenges to an agency that has historically provided services to businesses.

4. **Which fiscal year will first be affected by this bill?** If passed, this bill takes effect immediately. Assuming this measure is enacted after July 1, 2013, the exemption may not apply to FY 2013-14. Regulations⁶ adopted by CAL FIRE hold liable for the fee the person identified as the property owner as of July 1 in state or county records. If the fee is imposed on the owner as of July 1, 2013, but the exemption is effective after that date, is the exemption effective for FY 2013-14 assessments or for FY 2014-15 assessments? BOE staff recommends the author clarify the intent and can assist drafting appropriate amendments.

The following illustrates the timing issue that needs clarification:

| FY | FY Period | Fee Owed by: | Exemption effective after 07/01/13 |
|---------|---------------------|----------------------------|-------------------------------------|
| 2013-14 | 07/01/13 – 06/30/14 | Property Owner on 07/01/13 | Fee already assessed, no exemption. |
| 2014-15 | 07/01/14 – 06/30/15 | Property Owner on 07/01/14 | Exemption available. |

⁶ Chapter 13, *State Responsibility Area Fees*, of Div. 1.5 of Title 14 of the California Code of Regulations.

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- 5. Technical suggestions.** BOE staff suggests the bill provide more administrative details, including, but not limited to, the following: (a) describe exemption criteria; (b) identify the agency that will make the exemption decisions; (c) specify how the criteria will be verified; and (d) establish a clear process for feepayers to obtain the exemption. Additionally, the term “income” should be defined. Does income refer to “adjusted gross income,” total income from all sources, or to household income? Are certain types of income exempt, such as disability benefits or veteran’s benefits? What measure is used for feepayers that may not be required to file income tax returns? Does the feepayer use projected income for the coming calendar or fiscal year? Can the income reported on an income tax return be used, even though it represents income for the past calendar year?
- 6. Related bills.** AB 23 (Donnelly) and AB 124 (Morrell) would repeal the fire prevention fee, while SB 17 (Gaines) states the intent to do so. AB 468 (Chesbro) would repeal the fee and replace it with an insurance tax surcharge. SB 125 (Gaines) would exempt from the fire prevention fee property with a habitable structure that lies within both an SRA and the boundaries of a local fire district that provides fire protection service.

COST ESTIMATE

The administrative concerns expressed previously may impact BOE’s administrative costs. As issues are addressed, we can better identify any costs related to the proposed fire prevention fee exemption.

REVENUE ESTIMATE

CAL FIRE estimates that fire fee assessments for fiscal year 2013-14 will amount to \$90 million. Based on the U.S. Census Bureau data, BOE staff estimates that 17% of homeowners within the SRA may earn incomes of less than 200% of the federal poverty level. Applying census poverty level statistics to property owners within the SRA would result in an annual revenue loss of \$15.3 million (\$90 million x 17% = \$15.3 million).

Qualifying Remarks. It is difficult to determine the actual number of property owners within the SRA whose incomes are less than 200% of the federal poverty level. To the extent that there could be more or fewer homeowners who qualify, the revenue could be under- or overstated.

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